

IN THE MATTER OF	:	BEFORE THE
<b>RICHARD G. O'STEEN</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	<b>BA 05-050N&amp;V</b>

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### **DECISION AND ORDER**

On April 10 and June 19, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Richard G. O'Steen, Petitioner, for the confirmation and enlargement of a nonconforming use for a vehicle repair facility located in a CAC-CLI (Corridor Activity Center – Continuing Light Industrial) Zoning District, filed pursuant to Section 129 of the Howard County Zoning Regulations (the "Zoning Regulations"). Petitioner also requests a variance under Section 130.B.2 of the Zoning Regulations to reduce the 30 foot building setback to four feet for a garage addition.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Richard G. O'Steen appeared in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 10084 Washington Boulevard (U.S. Route 1), is located in the 6<sup>th</sup> Election District on the west side of Washington Boulevard about 200 feet south of North Laurel Avenue in Laurel (the "Property"). The Property is identified on Tax Map 50, Block 10, as Parcel 431.

The Property is a long, narrow, quadrilateral-shaped parcel consisting of about 0.64 acres. The lot has about 75 feet of frontage on Washington Boulevard and narrows gradually to a width of about 54 feet at the rear lot line. The Property is about 425 feet deep along its south side and 394.5 feet deep along its north side.

The Property is improved with a 1½-story, five-bay, 2,720-square foot garage building situated about 51 feet from the Washington Boulevard frontage. About 50 feet behind the large garage building, along the southern side lot line, is a 14' wide by 20' deep garage attached to a 12' wide by 20' deep shed. The 280 square foot garage building was recently constructed over an existing concrete slab with a vehicle lift.

Access to the site from Washington Boulevard is gained via a driveway along the southwest side of the Property. A paved parking area is located in front of the large garage building. The majority of the site is comprised of paved drive aisles and parking areas.

2. The Property is the site of an automotive repair facility known as Central Service Center, Inc. Prior to being rezoned CAC-CLI on April 13, 2004, the Property was zoned B-2, in which district an automotive repair business was a permitted use. The Petitioner presented invoices and balance sheets from the business indicating that automobile repair was conducted on the

Property on a regular basis between September 2003 and January 2006. In addition, the DPZ report states that Maryland Department of Assessment and Taxation Records indicate that the 2,720 square foot garage building has existed on the Property since 1978. Department of Planning and Zoning aerial photographs of the Property taken in 2002 and 2004 show the 12' by 20' shed with an uncovered concrete slab attached to the front of the shed. The DPZ report states that a site inspection of the 280 square foot garage addition shows that the concrete slab is stained and cracked and appears to have been used for vehicle repairs for an extensive period of time. The photographs of the interior of the garage submitted with the petition support this finding.

3. The Petitioner requests confirmation of a nonconforming use for a vehicle repair facility on the Property, including the existing 2,720-square foot garage building, the 12' by 20' shed, and the 14' by 20' concrete slab and vehicle lift. In addition, the Petitioner seeks approval of the enlargement of the nonconforming use through the construction of the 280 square foot garage addition over the existing concrete slab with vehicle lift. Finally, the Petitioner requests a variance from the 30-foot setback required by Section 127.5.D.5 for the 280 square foot garage addition, which is situated about four feet from the south side lot line.<sup>1</sup>

4. Vicinal properties to the north, east and south are also zoned CAC-CLI and include another vehicle repair facility (to the south), a bakery, and several vacant lots. The properties to the west are zoned R-SC and are improved with a nonconforming use private school and single-family detached dwellings.

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<sup>1</sup> A variance is not required for the other structures on the Property because they are "noncomplying structures" under Section 128.B.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. Confirmation of Nonconforming Uses (Section 129.D):**

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

In this case, the Petitioner has presented uncontroverted evidence in the form of documentation that the Property was has been used as a vehicle repair facility since at least 2002 and that such use has continued uninterrupted since that date. Consequently, I conclude that the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with section 129.D.

#### **II. Extension, Enlargement or Alteration of Nonconforming Uses (Section 129.E).**

A. The Petitioner has constructed an addition, approximately 14 feet by 20 feet, over an existing concrete slab with a vehicle lift that is attached to the 240 square foot shed along the south side of the lot, and requests approval of this enlargement of the nonconforming use. The enlargement merely covers the concrete slab and lift that were already being used for vehicle repair, and allows this use to continue during inclement weather. I conclude, therefore, that the addition will not change the use in any substantial way, in accordance with Section 129.E.1.a.

B. The 280 square foot addition is less than 10% of the 2,960 square foot gross floor area of the garage and shed, which is less than the maximum increase of 100% of the gross floor area allowed by Section 129.E.1.b.

C. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

D. The addition is situated four feet from the south side lot line. Thus, the addition will require a variance from the bulk regulations for the CAC zone, in accordance with Section 129.E.1.d.

E. The addition is located to the rear of the existing large garage building. While the addition is placed near the lot line, the adjacent property is also a vehicle repair facility. The addition will be used to bring an outdoor use indoors and will not generate excessive noise, odors, or other adverse affects; in fact, it should reduce such effects. The use will not increase traffic to or on the Property or otherwise increase the intensity of the use of the Property. Consequently, the garage addition will not cause adverse effect on vicinal properties in accordance with Section 129.E.1.e.

### **III. Standards for Variances (Section 130.B.2.a)**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition,

practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. The Property is only 75 feet wide at the road frontage and narrows to 54 feet at the rear of the lot. When the 30-foot setbacks are applied to both sides of the Property, the resulting building envelope is nearly non-existent. Given its relative narrowness, it is impossible to comply with the required 30-foot setback. The narrowness of the lot is a unique physical condition peculiar to the particular lot; and as a result of this unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations. Consequently, I find that the shape of the Property is a unique physical condition that causes the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

3. The garage addition is located to the rear of the existing large garage and adjacent to the existing 240 square foot shed. The addition covers the existing nonconforming concrete slab and vehicle lift and will reduce the amount of noise, odors and other adverse effects caused by it. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

4. The practical difficulty in complying strictly with the setback regulation arises from the narrowness of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

5. The garage addition is of a reasonable size for the proposed uses. What's more, it covers an existing outdoor nonconforming use and will therefore help to reduce its adverse effects. Within the intent and purpose of the regulations, then, the variance is the minimum variance

necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **11<sup>th</sup> day of July 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

A. That the Petition of Richard G. O'Steen for the confirmation and enlargement of a nonconforming use for a vehicle repair facility located in a CAC-CLI (Corridor Activity Center – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

**Provided, however**, that the nonconforming use and enlargement will apply only to the land area, uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property; and

B. That the Petition of Richard G. O'Steen for a variance to reduce the 30 foot building setback to four feet for a garage addition in a CAC-CLI (Corridor Activity Center – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo



Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.